Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

In re Application of	)	
	)	
GTE Corporation,	)	
Transferor,	)	
	)	
AND	)	
	)	
Bell Atlantic Corporation,	)	CC Docket No. 98-184
Transferee,	)	
	)	
For Consent to Transfer Control of Domestic	)	
and International Section 214 and 310	)	
Authorizations and Applications to Transfer	)	
Control of a Submarine Cable Landing License.	)	

COMMENTS OF AT&T CORP. IN RESPONSE TO VERIZON'S REQUEST FOR WAIVER OF THE BELL ATLANTIC/GTE MERGER CONDITIONS

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TABLE OF CONTENTS

Page

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In re Application of	)	
	)	
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	)	
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Pursuant to the Common Carrier Bureau's Public Notice,[1] AT&T Corp. ("AT&T") hereby responds to Verizon's requests[2] for a waiver of several merger conditions adopted by the Commission in the *Bell Atlantic/GTE Merger Order*.[3] Verizon's recent requests echo its earlier efforts to accelerate the reintegration of its advanced services separate affiliate, Verizon

[1] *Pleading Cycle Established for Comments on Verizon's Ex Parte Filings Concerning Merger Conditions To Be Waived For Verizon's xDSL Over Resold Lines Service*, FCC Public Notice, CC Docket No. 98-184 (rel. Aug. 23, 2001).

[2] Letter from Dee May, Executive Director - Federal Regulatory, Verizon, to Ms. Magalie Roman Salas, FCC Secretary, August 10, 2001 ("Verizon August 10, 2001 letter"); Letter from Dee May, Executive Director - Federal Regulatory Verizon, to Ms. Magalie Roman Salas, FCC Secretary, August 17, 2001 ("Verizon August 17, 2001 letter").

[3] *Application of GTE Corporation and Bell Atlantic Corporation for Consent to Transfer Control of Domestic and International Section 214 and 310 Authorizations and Applications to Transfer Control of a Submarine Cable Landing License*, 15 FCC Rcd 14032, 14288-89 App. D at ¶ 11.c (2000) ("*Merger Order*").

Advanced Data, Inc. ("VADI"), into Verizon.[4] For the reasons set forth below, AT&T again asks the Commission to take clear steps to ensure that Verizon will fulfill its statutory obligations and not undermine competition for advanced services before acting on any of Verizon's requests. If anything, Verizon's latest *ex parte* letters highlight the need for the Commission to put the necessary protections in place before the transition period ends, either at the end of the nine-month period provided for in the merger conditions or earlier if it grants Verizon's request to dismantle the separate affiliate structure on an accelerated basis.

INTRODUCTION AND SUMMARY

On April 26, 2001, Verizon submitted a letter requesting the Commission to accelerate a condition of the *Merger Order* that required Verizon to maintain a separate advanced services affiliate for nine months after a final and non-appealable judicial decision that such an affiliate is a successor or assign of Verizon.[5] The purpose of the nine-month period was to give the Commission time to adopt further requirements necessary to protect competition from the harmful effects of the merger once the separate affiliate structure is dismantled. Accordingly, AT&T's and CompTel's comments in response to the Verizon April 26 letter stressed the importance of obtaining further information and assurances that would enable the Commission to minimize Verizon's incentive and opportunity to undermine competition for advanced services before granting Verizon's request.[6] In particular, both urged the Commission to require that Verizon submit documentation demonstrating how it will comply with its statutory obligations

[4] *See* Letter from Gordon R. Evans, VP Federal Regulatory, Verizon, to Ms. Dorothy Attwood, Chief, Common Carrier Bureau, April 26, 2001 ("Verizon April 26, 2001 letter") (attached to May 1, 2001 ex parte letter from Gordon Evans to Ms. Magalie Roman Salas, Secretary, FCC).

[5] The D.C. Circuit made such a finding in the *ASCENT* decision, *Association of Communications Enterprises v. FCC*, 235 F.3d 662 (D.C. Cir. 2001).

[6] AT&T Comments at 2-7; CompTel Comments at 5 (both filed June 14, 2001).

once its advanced services are transitioned from the affiliate to a non-separated division of Verizon, and to obtain public comment on Verizon's plans before acting on Verizon's request.[7]

Verizon, however, has not yet provided any information as to how it intends to operate once VADI is integrated into the parent company, so that competitors can gain the assurances they need that Verizon will provide advanced telecommunications facilities and services in a nondiscriminatory manner. Instead, Verizon's August 10 letter offers a "preliminary list" of merger conditions that it argues should be waived so that Verizon may offer its "xDSL Over Resold Lines Service" immediately. This "preliminary list" of merger conditions includes a number of protective measures that, if lifted, would permit VADI to access information (Merger Conditions, ¶¶ 4(b)(6), 4(e), 4(i)), work order functionality and other functions (¶ 4(c)), and facilities and services (¶¶ 4(f), 3(b)) that are not otherwise available to non-affiliated companies.[8] One week later, on August 17, Verizon informed the Commission that accelerated treatment of its initial waiver request would "obviate the need for the bulk of the specific waivers" identified in Verizon's August 10 letter.[9]

These recent *ex parte* letters strongly suggest that Verizon hopes that the separate affiliate structure can be dismantled without having other protections erected in its place. This would be antithetical to the public interest, because, as AT&T explained in its June 14 comments,[10] the Merger Conditions were adopted for the sole purpose of ameliorating what would otherwise have been the overwhelmingly adverse effects of permitting Bell Atlantic to acquire GTE. In particular, the Commission required Verizon's separate affiliate to obtain inputs from Verizon

[7] AT&T Comments at 4-7; CompTel Comments at 5.

[8] Verizon August 10, 2001 letter at 1-2.

[9] Verizon August 17, 2001 letter at 1. In this letter, Verizon also indicated its belief that only one waiver request -- that Verizon's resold DSL service be exempt from "all performance reporting requirements" -- would be needed if the Commission waived the advanced services affiliate structure set forth in the Merger Conditions.

utilizing the same processes available to unaffiliated competitors (*e.g.*, collocation, OSS access), in order to "ensure a level playing field between Bell Atlantic/GTE and its advanced services competitors."[11] These concerns are as valid now as they were then. Thus, the Commission should not grant Verizon's request to dismantle the protections afforded by the creation of the separate affiliate until the Commission develops equally strong protections to replace them.[12]

Retaining these protections is particularly important, where, as here, Verizon has the opportunity -- and the intention -- to leverage its monopoly control over local telephony into the provision of advanced services, by restricting access to next-generation networks and advanced services in such a way that only Verizon can use them to compete effectively. Verizon already has clearly stated its belief that it is entitled to exclude all other providers from access to next generation digital loop carrier architecture, and has repeatedly demonstrated that in the absence of unambiguous Commission directives, it will continue to block CLECs' ability to access such requirements for competitive deployment of advanced services networks. Freeing Verizon from the merger conditions without adequate substitutes -- as well as a demonstrated ability and intention to comply -- would only support Verizon's anticompetitive objectives.

Accordingly, and as discussed in more detail below, the Commission should take the following actions before granting any of Verizon's waiver requests, in order to minimize Verizon's incentives and ability to discriminate against competitors that seek to provide advanced telecommunications facilities and services:

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[10] AT&T Comments at 2-3.

[11] *Merger Order*, 15 FCC Rcd at 14149, ¶ 261.

[12] As part of this effort, the Commission should ensure that Verizon is operationally ready to support potential competitors in a manner equivalent to that previously carried out by VADI. Prior experience has shown that Verizon may agree only to vague obligations, and then delay competition further by arguing over the interpretation of those obligations.

- require that Verizon provide a complete explanation and description of how it intends to operate once VADI is integrated into the parent company;

- clarify competitors' rights to access Verizon's advanced telecommunications facilities and services; and

- deny Verizon's request to exempt its "new" resale services from the performance measurements and conditions set forth in its merger conditions.

ARGUMENT

I. Verizon Must Describe How It Intends to Operate Once VADI Is Integrated into Verizon.

As a threshold matter, the Commission should require Verizon to provide a complete explanation and description of how it intends to operate once VADI is integrated into the parent company, to ensure that Verizon's xDSL deployment plans foster, rather than impair, competitive opportunities and consumer choices. AT&T does not object to the creation of reasonable processes as long as those processes do not give Verizon an unfair competitive advantage. To date, however, Verizon has not provided either the Commission or competitors with any information that would permit interested parties to determine whether Verizon will provide advanced telecommunications facilities and services in a nondiscriminatory manner.

Accordingly, the Commission should require Verizon to provide specific information regarding its plans once VADI is reintegrated back into the parent company, so that the Commission can determine whether Verizon will be in compliance with its statutory obligations. At a minimum, Verizon should be required to provide the following information:

- whether, and to what extent, Verizon's advanced service operations include the use of "the same interfaces, processes and procedures" that are available to other CLECs for pre-ordering, provisioning, and repair and maintenance of Advanced Services (Merger Condition, ¶ 13(c)(1));

- a description (in more detail than that set forth in the Verizon August 10, 2001 letter) of the ways in which VADI will be able to access information, work order

functionality, and other functions, facilities, and services that are not otherwise available to unaffiliated carriers (*e.g.*, the ways in which VADI and the ILEC will "coordinate their activities, exchange information and access each other systems" in a manner inconsistent with section 272; the "reseller-specific information" and "ILEC systems" that only VADI will have access to under Verizon's waiver request, etc.);

- a description of how Verizon intends to comply with all of its continuing obligations under Paragraph 13 of the Merger Conditions after VADI is reintegrated;

- a description of how Verizon intends to: (1) provide unbundled network elements (including subloop unbundling, line sharing, and line splitting), remote terminal collocation, and operation support systems ("OSS") provisioning over hybrid fiber/copper loops; (2) apply TELRIC pricing principles; and (3) provide DSL services for resale to CLECs that employ a UNE-P or UNE-Loop architecture; and

- a description of how Verizon will mitigate the risk that it will deploy next generation architecture in a discriminatory manner.

While the above list is far from complete, such action is the minimum necessary, both to foster advanced services competition in Verizon's existing markets, and to minimize the risk that anti-competitive policies are being inextricably interwoven into Verizon's loop architecture, which must serve both Verizon and CLECs in the future. Imposing these minimum requirements is particularly important given Verizon's request that the Commission eliminate the separate affiliate requirement and other protections that the Commission established as necessary conditions of approving the merger and granting Verizon section 271 relief.

II. The Commission Should Clarify Competitors' Rights to Access Advanced Telecommunications Facilities and Services.

In addition, before granting any of Verizon's waiver requests, it is important that the Commission clarify competitors' rights to access advanced telecommunications facilities and services. Verizon's claim that the Commission can simply grant Verizon's request because the

Merger Conditions specify the requirements that will be imposed on Verizon upon reintegration is patently insufficient.[13] In adopting the Merger Conditions, the Commission emphasized that its action was not intended to -- and did not -- constitute "an interpretation of [Verizon's legal obligations under] the Communications Act, especially Sections 251, 252, 271, and 272, or the Commission's rules . . ."[14] Indeed, no waiver of the Merger Conditions could alter Verizon's statutory obligations. Nor should the Commission consider any waiver without evaluating its impact on Verizon's ability to meet its statutory duties. Thus, in analyzing Verizon's request, the Commission must ensure that the nondiscrimination requirements of the Act are enforced with respect to *all* of the issues that implicate the competitive provision of voice and advanced services over Verizon's existing and next generation loop architectures, including, but not limited to, line sharing, line splitting, and Verizon's obligation to offer advanced services for resale to CLECs that use a UNE-P or UNE-Loop architecture.

Nor is it sufficient to simply accept Verizon's assurances that "no competitor will be harmed" by termination of the separate affiliate requirement.[15] Given the magnitude and significance of Verizon's DSL plans,[16] there is every reason to believe that Verizon will attempt to extend its monopoly control over local telephony to advanced services by operating and controlling access to current and next-generation loop architectures, so that only Verizon will be able to compete effectively through use of this architecture. These concerns are not speculative. Notably, although the ILECs showed no interest in offering high-speed residential DSL service until prompted to do so in response to emerging competition from cable operators and now-

[13] Verizon April 26, 2001 letter at 1.

[14] *Merger Order*, 15 FCC Rcd at 14146, ¶ 253.

[15] Verizon April 26, 2001 letter at 1.

[16] *See* "Verizon Communications Second Quarter Earnings Highlighted by Strong Long-Distance and Wireless Sales," (press release July 31, 2001) (stating Verizon's expectation of 1.2-1.3 million DSL subscribers by year-end).

bankrupt competitive LECs like Covad, NorthPoint, and Rhythms, they now control approximately 90 percent of all residential DSL lines.[17] Moreover, since adoption of the merger conditions on June 16, 2000 -- and despite the Commission's effort in the *Line Sharing Reconsideration Order* to encourage competition for advanced telecommunications services as the ILECs upgrade their loop architecture -- Verizon and other incumbents have vociferously argued that they should be entitled to reserve the use of next generation loop facilities exclusively to themselves.[18] This would, at a minimum, give the incumbents the power to control the pace at which competitors could introduce or expand their own advanced services networks and bring DSL-based competition to end user customers. At worst, it could ring the death-knell for any competitive DSL offerings.

The Commission should therefore take this opportunity to clarify competitors' rights to access advanced telecommunications functions and services.[19] As AT&T has explained in detail on many occasions, the Commission should clarify that competitors are entitled to access NGDLC loops as unbundled network elements, and should explicitly rule that competitors are entitled in all cases to access incumbent LECs' "entire" loop functionality at cost-based rates.[20] In addition, and for the reasons set forth in AT&T's comments and reply comments in response to Verizon's application for authority to provide interLATA services in Pennsylvania, the Commission should also find that Verizon's obligation to resell DSL service pursuant to section

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[17] *See* <www.xdsl.com/content/resources/deployment_info.asp> (ILECs control 2,800,160 DSL lines, 80% of which are residential, of the 3,334,491 total DSL lines in service, 74% of which are residential).

[18] *See*, *e.g.*, *Deployment of Wireline Services Offering Advanced Telecommunications Capability*, CC Docket No. 98-147, *3rd FNPRM*; *Implementation of the Local Competition Provisions of the Telecommunications Act of 1996*, CC Docket No. 96-98, *6th NPRM*, Verizon Comments at 1-6; SBC Comments at 26-30 (filed Feb. 27, 2001).

[19] Such clarification must include sufficient detail and direction to ensure that Verizon has no opportunity to use its "misinterpretation" as a means of delayed implementation.

[20] A full description of AT&T's position on this issue is found in its October 12, 2000 and February 27, 2001 Comments, and November 27, 2000 and March 13, 2001 Reply Comments in CC Docket Nos. 98-147 and 96-98, hereby incorporated by reference.

251(c)(4) extends to both UNE-P and UNE-L CLECs.[21] Once the Commission has clarified these rights, it will have established the legal framework that, coupled with additional record evidence supplied by Verizon, will enable it to determine whether Verizon has provided the necessary assurances to demonstrate that it will comply with its statutory obligations and not further stifle competition for advanced services. As AT&T has previously explained,[22] that understanding should reflect a consideration of how Verizon intends to:

- provide unbundled access to hybrid fiber/copper loops to CLECs (utilizing either UNE-P or UNE-L) for either voice or advanced services alone, as well as a combined voice and advanced services offering;
- provide line sharing and line splitting unbundled access at the central office over hybrid fiber/copper loops, as required by the *Line Sharing Reconsideration Order*;
- preserve existing copper transmission facilities and make remote terminal collocation available to competitors in a nondiscriminatory manner; and
- provide resold DSL services to UNE-P and UNE-L carriers.

Clear federal rules on these issues are needed now, before the protections afforded by the *Merger Order* have been eliminated. Verizon has demonstrated that it will do nothing to enable competition for advanced services unless the Commission issues explicit and fully detailed requirements. Further, in the absence of a uniform national baseline for CLEC access to ILECs' next-generation loops under section 251(c)(3), and the adoption of DSL resale rules consistent with section 251(c)(4), CLECs will be forced to contend with a crazy-quilt of state-by-state regulation. The only beneficiaries of such inefficient arrangements are incumbent LECs such as

[21] *See Application by Verizon Pennsylvania, Inc. et al. to Provide In-Region InterLATA Services in Pennsylvania*, CC Docket No. 01-138, Comments of AT&T Corp. at 31-44 (filed July 22, 2001); Reply Comments of AT&T Corp. at 14-24 (filed Aug. 6, 2001), hereby incorporated by reference.

[22] AT&T Comments at 6-7.

Verizon, who have an interest in making competitive entry as complicated and as expensive as possible for both competitors and regulators.

III. The Commission Must Reject Verizon's Request for Waiver of the Merger-Related Performance Metrics Associated With Advanced Services.

Finally, Verizon asks the Commission to exempt it from providing merger-related performance metrics for its "new" DSL resale service to the FCC and state commissions as part of its Carrier-to-Carrier Performance Assurance Plan ("Plan").[23] As grounds for this request, Verizon claims that it should be "exempt from all performance reporting requirements to allow Verizon and VADI an opportunity to gain commercial experience providing the new service."[24]

Verizon's request to eliminate any merger-related performance metrics associated with advanced services should be flatly rejected. The Commission adopted these metrics in order to "partially alleviate [Verizon's] increased incentive and ability to discriminate against rivals following the merger." *Merger Order* at ¶ 362. Specifically, as a condition of the merger, the Commission required Verizon to report its performance on numerous measures, and make voluntary payments of up to $1.164 billion to the U.S. Treasury should Verizon fail to achieve agreed-upon performance goals. *Id*. at ¶ 280.

The *Merger Order* makes clear that the Commission considers the Plan -- and the associated metrics that Verizon initially agreed to, but now seeks to waive -- to be an important detection and deterrent device. In the *Merger Order*, the metrics that Verizon seeks to waive were "designed specifically to permit monitoring for discriminatory conduct in Bell

[23] Verizon August 10, 2001 letter at 2.

[24] Verizon's request for additional time is particularly troubling, given that it already has successfully deployed more than 840,000 DSL lines. That deployment should constitute sufficient experience to allow Verizon to deploy its "new" service now.

Atlantic/GTE's provision of elements and services utilized in providing advanced services." *Id.* at ¶ 363. Many of these metrics were designed to track Verizon's performance on functions essential to an open, competitive local market: pre-ordering, ordering, provisioning, maintenance and repair, and billing associated with UNEs, interconnection, and resold services. *Id*. at ¶ 279. Moreover, the Commission also included a system of performance-based penalties in order to create a "heightened incentive for Verizon not to discriminate in ways that would be detected through the measures." *Id.* at ¶ 362. The Commission also believed that the voluntary payment scheme would create a direct economic incentive for Verizon to cure performance problems quickly. *Id.*

AT&T agrees with the Commission that that Plan, and the underlying metrics, can be a useful diagnostic tool that can allow competitors the ability to evaluate Verizon's performance relative to itself and CLECs in the aggregate. Although the Plan and the voluntary payment scheme are not, standing alone, sufficient to police against potential anti-competitive behavior,[25] the elimination of metrics associated with advanced telecommunications facilities and services will diminish competitors' ability to identify and address discriminatory treatment by Verizon. There is absolutely no basis for granting Verizon's request for waiver of these metrics under any circumstances.

[25] For example, Verizon has apparently determined that payment for poor performance is simply the cost of doing business. On August 24, 2001, Verizon paid over $1.5 million to the U.S. Treasury for metrics missed during the months of April, May, and June 2001. Letter from Dee May, Executive Director-Federal Regulatory, Verizon, to Ms. Magalie Salas, FCC Secretary, August 27, 2001.

CONCLUSION

The Commission should use this opportunity to minimize Verizon's incentive and ability to undermine competition for advanced services by taking the specific actions advocated above.

Respectfully submitted,

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